

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

GUNTER HEINZ PESCHKE, JR.,)	
)	
Plaintiff,)	
)	
v.)	No. 3:17-CV-543-DCP
)	
ANDREW M. SAUL, ¹)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

ORDER

This case is before the undersigned pursuant to 28 U.S.C. § 636(b), Rule 73 of the Federal Rules of Civil Procedure, and the consent of the parties [Doc. 20].

Now before the Court is Plaintiff's Motion and Opening Brief [Doc. 21], the Commissioner's Motion for Summary Judgment and Memorandum in Support [Docs. 28 & 29], and Plaintiff's Motion to Voluntarily Dismiss [Doc. 30]. In his Motion to Voluntarily Dismiss [Doc. 30], filed on September 6, 2018, Plaintiff seeks to "withdraw his civil suit" so he can "reapply for [his] disability." [Doc. 30 at 1]. The Commissioner subsequently responded that it interpreted Plaintiff's motion as a notice of voluntary dismissal under Fed. R. Civ. P. 41(a)(2), and had no objection to the motion. [Doc. 31].

Under Federal Rule of Civil Procedure 41(a)(2), "an action may be dismissed at the plaintiff's request" through a court order "by terms that the court considers proper." Although Plaintiff is proceeding pro se, he has stated that he wishes to withdraw the pending action and

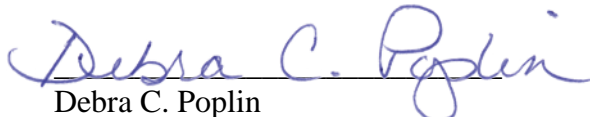
¹ Andrew M. Saul was sworn in as the Commissioner of Social Security on June 17, 2019, during the pendency of this case. Therefore, pursuant to Federal Rule of Civil Procedure 25(d), Andrew M. Saul is substituted as the Defendant in this case.

reapply for disability benefits. *See Armstead v. Comm’r of Soc. Sec.*, No. 17-6069, 2017 WL 6351933, at *1 (6th Cir. Dec. 7, 2017) (granting pro se plaintiff’s motion to voluntarily dismiss appeal of district court’s decision affirming denial of supplemental social security income); *Pierce v. Comm’r of Soc. Sec.*, No. 10-10511, 2010 WL 4386973, at *2 (E.D. Mich. Oct. 6, 2010), *report and recommendation adopted*, 2010 WL 4386972 (E.D. Mich. Oct. 29, 2010) (granting pro se plaintiff’s voluntary motion to dismiss).

Ultimately, due to the Commissioner’s lack of an objection, the Court finds that Plaintiff’s request to withdraw is proper, and Plaintiff’s Motion to Withdraw [**Doc. 30**] is **GRANTED**. Therefore, Plaintiff’s Motion and Opening Brief [**Doc. 21**] and the Commissioner’s Motion for Summary Judgment [**Doc. 28**] are **DENIED AS MOOT**. This case is hereby **DISMISSED WITHOUT PREJUDICE**. *See* Fed. R. Civ. P. 41(a)(2).

IT IS SO ORDERED.

ENTER:


Debra C. Poplin
United States Magistrate Judge